

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

 344 PROVIDENCE ROAD REALTY
 TRUST, RICHARD J. WUNSCHER, and
 NAUTILUS INSURANCE COMPANY,
 Plaintiffs

v.

 AMERICAN SAFETY RISK RETENTION
 GROUP, INC. and ARCHITECTURAL
 DELEADING, INC.
 Defendants

CIVIL ACTION NO.: 04-40197-FDS

**MOTION OF THE DEFENDANT, ARCHITECTURAL DELEADING, INC., FOR
LEAVE TO CONTACT AND IDENTIFY EXPERT WITNESS**

The defendant Architectural Deleading, Inc., in conjunction with its disclosure of experts as required by this Court's Order, as extended, moves the Court for leave to use as expert evidence, and to contact as expert, an expert witness designated by the plaintiffs herein in their capacity as defendants in the State Court action underlying the instant action. As reason therefore, the defendant states that the plaintiffs 344 Providence Road Realty Trust and Richard J. Wunschel, as defendants in the State Court action, identified as an expert witness one Charles J. Dinezio, describing by Affidavit his expected testimony in a manner diametrically opposed to the testimony expected from the plaintiffs' current expert as identified in this action, A. Vernon Woodworth. The defendant herein also relied on Mr. Dinezio's opinions in mediation of the state court claim. Copies of the respective expert reports in the State and Federal Court actions are attached to this Motion.

As further reason, the defendant states that it has felt constrained from contacting Mr. Dinezio because of his status as expert retained by the plaintiffs in their capacity as defendants in the State Court action. Indeed, the defendants were unsure whether the plaintiffs in this action would identify Mr. Dinezio in this action. They have not done so. Nevertheless, it is likely that

they will seek to disqualify Mr. Dinezio from testifying on behalf of Architectural Deleading, Inc. as defendant in this action. See Malden Mills Industries, Inc., Debtors; Commerce Industry Insurance Company v. E.I. Du Pont De Nemours & Company, 275 Bankruptcy Reporter 670 (D. Mass. 2002); City of Springfield v. Rexnord Corporation, 111 F.Supp.2d 71 (D. Mass. 2000).

Accordingly, the defendant moves the Court for leave to contact and identify Mr. Dinezio as expert for the defendant, and, if plaintiffs will seek to disqualify Mr. Dinezio, that they do so in response to this Motion.

The Defendant,
ARCHITECTURAL DELEADING, INC.

By Its Attorneys,
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